

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

September 4, 2013 at 10:00 a.m.

1.	<u>13-22901</u> -E-13	VICTOR/SANDRA GARCIA	MOTION TO DISMISS CASE
	TSB-2	Peter Macaluso	8-20-13 [<u>55</u>]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on August 20, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Final Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to deny without prejudice the Motion to Dismiss. No appearance at the September 4, 2013 hearing is required.

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on May 14, 2013.

A review of the docket shows that Debtor has filed a new plan and a motion to confirm a plan and set the hearing for October 22, 2013. The court has conducted preliminary review of the motion and the declaration in support thereof. The motion appears to have been drafted in a manner consistent with the requirements of Federal Rule of Bankruptcy Procedure 9013 and the declaration provides testimony as to specific facts from which the court could make the necessary findings of fact and conclusions of law.

The Debtor having addressed the Trustee's concerns, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the

September 4, 2013 at 10:00 a.m.

Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

2. [13-26601](#)-E-13 CASSANDRA HUAPAYA
Richard Jare

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-18-13 [[33](#)]**

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on July 15, 2013). The court docket reflects that on July 18, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

3. [13-23803](#)-E-13 MARIA FLORES
Pro Se

AMENDED ORDER TO SHOW CAUSE -
FAILURE TO PAY FEES
7-30-13 [[47](#)]

CASE DISMISSED 8/2/13

Final Ruling: The case having previously been dismissed, the Order to Show cause is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is dismissed as moot, the case having already been dismissed.

4. [13-25815](#)-E-13 CONSUELO PARADEE
TSB-2 Kristy Hernandez

MOTION TO DISMISS CASE
8-20-13 [[62](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 20, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its

final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 16, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

5. 10-44316-E-13 EDWIN/SONIA SANCHEZ MOTION TO DISMISS CASE
NLE-7 Eliza Ghanooni 7-1-13 [[82](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on July 1, 2013. By the court's calculation, 65 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$14,874.45 delinquent in plan payments, which represents multiple months of the \$4,958.15 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

6. [11-37716](#)-E-13 MILTON FLOWERS AND MOTION TO DISMISS CASE
TSB-1 TANISHA GORDON-FLOWERS 8-7-13 [[74](#)]
Peter Macaluso

Local Rule 9014-1(f) (1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on August 7, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee objects on the grounds that the Debtor is in material default pursuant to section 6.03 of the plan, as the Trustee calculates the plan will complete in 68 months as opposed to the 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

The Trustee also argues that the plan fails the Chapter 7 analysis under 11 U.S.C. § 1325(a) (4). The Debtor's non-exempt equity totals \$10,679.00 and the Debtor's confirmed plan proposes to pay the unsecured creditors a zero percent dividend.

Debtor responds stating that they will file, set and serve a modified plan prior to the hearing on this matter.

A review of the docket shows that Debtor has failed to file, set or serve a modified plan to date.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and

upon review of the pleadings, evidence, arguments of counsel,
and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and
the case is dismissed.

7. 10-52924-E-13 DAYAL/REKHA CHANDRA MOTION TO DISMISS CASE
DPC-3 Peter Macaluso 7-30-13 [[75](#)]

Local Rule 9014-1(f) (1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on July 30, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$300.00 delinquent in plan payments, which represents multiple months of the \$150.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c) (1).

Debtor respond and state they have made one of the missed payments and will pay the additional payment on or before the hearing date.

Debtor has not provided sufficient evidence that the payments have been made. Therefore, the Motion is granted.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the
Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

8. 12-33526-E-13 **ARBERZINE FISHER** **MOTION TO DISMISS CASE**
 TSB-4 **Scott Sagaria** **8-6-13 [98]**

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 6, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 2, 2013.

Debtor filed a response, stating that Debtor has filed and served a Second Amended Chapter 13 plan and set it for hearing on September 24, 2013. Debtor states the plan is confirmable and that she is current under the plan.

The Trustee filed a reply, stating that the Second Amended Plan is dated May 7, 2013, which was the plan the court denied on July 2, 2013. Therefore, the Trustee argues that the plan filed is not confirmable, as it was the same plan denied by the court.

In denying confirmation of the May 7, 2013 Plan, the court stated, Civil Minutes, Dckt. 92,

"The courts decision is to deny the Motion to Confirm the Amended Plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee objects to the motion, arguing that Debtor has failed to accurately disclose their projected income and failed to provide the Trustee with information regarding a refinance. The Trustee reports that at the First Meeting of Creditors the Debtor reported that only two of the four units were rented, but she anticipated the other to being rented, increasing the income from \$3,100.00 a month to \$6,400.00 a month.

The Trustee argues that the Debtors Plan may not be the Debtors best effort under 11 U.S.C. § 1325(b), listing a First Mortgage for a property that Debtor has surrendered. The Trustee argues that Debtor cannot make payments under the plan or comply with 11 U.S.C. § 1325(a)(6), and Debtor has not listed an expense for real property tax and insurance expenses in Schedule J. Debtor has not replied to the Trustees opposition or provided the Trustee with the appropriate documents and schedules."

It appears that the current declaration in support of confirmation is a "carbon copy" (a phrase which dates the court) of the prior declaration, with the exemption of referring to the "Third Amended Plan" rather than the "Second Amended Plan. Declarations, Dckts. 82, 104. The Exhibits filed in support of the Motion are same for both motions. Exhibits, Dckts. 84, 106.

The court agrees. Debtors appear to be recycling plans, declarations, and other pleadings to create the illusion that they are prosecuting the case. The court denied the prior motion to confirm the July 7, 2013 Plan (not a denial without prejudice). A party cannot continue to bring back denied claims and causes of action. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on August 6, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$11,462.91.91 delinquent in plan payments, which represents multiple months of the \$3,918.20 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 19, 2013.

Debtor responds, stating that they are delinquent under the terms of the original plan filed in this case, but this plan was premised on payments to the first deed of trust holder on Debtor's former residence. Debtor states the property was sold pursuant to court order on May 3, 2013 and Debtors have made a good faith estimated payment of \$1,000.00 since June 2013. Debtor also provides that preparing a new plan has been complicated by the disruption of moving houses. Debtors state they anticipate filing a new plan on August 21, 2013.

A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

10. [12-41331](#)-E-13 **FELICIA WOODARD** **MOTION TO DISMISS CASE**
TSB-4 **Peter Macaluso** 8-6-13 [[122](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 6, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,995.00 delinquent in plan payments, which represents multiple months of the \$1,665.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 16, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case

is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

11.	<u>11-21536</u> -E-13	CHRIS/TERESA DAHLBERG	MOTION TO DISMISS CASE
	DPC-2	John Tosney	7-30-13 [<u>72</u>]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on July 30, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$330.00 delinquent in plan payments, which represents multiple months of the \$110.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form

holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

12. [13-27436](#)-E-13 DAVID CRAFT
C. Anthony Hughes

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-1-13 [[29](#)]

CASE DISMISSED 8/2/13

Final Ruling: The case having previously been dismissed, the Order is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order is dismissed as moot, the case having already been dismissed.

13. 13-28039-E-13 SOHAIL AZIZ
TSB-2 Richard Oriakhi

MOTION TO DISMISS CASE
8-20-13 [[27](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 20, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee argues that the Debtor did not commence making plan payments and is \$600.00 delinquent in plan payments, which represents one month of the \$600.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Additionally, the Debtor has not provided the Trustee with proof of income for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(e)(2)(A)(i). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Lastly, the Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the

Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the Debtor must file a motion to confirm the Plan. See Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

14. [13-25142-E-13](#) DENNIS SPEARS
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-22-13 [[31](#)]**

CASE DISMISSED 8/2/13

Final Ruling: The case having previously been dismissed, the Order is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order is dismissed as moot, the case having already been dismissed.

15. [08-35843](#)-E-13 PATRICK NUNEZ
DPC-10 Mark Wolff

CONTINUED MOTION TO DISMISS
6-25-13 [[128](#)]

CONT. FROM 7-31-13

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

16. [13-24745-E-13](#) LORI SWAIN
TSB-2 Peter Macaluso

MOTION TO DISMISS CASE
8-7-13 [[37](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 7, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court sustaining the Trustee's objection to confirmation to Debtor's prior plan on June 18, 2013.

Debtor responds, stating that they will file, set and serve a Modified plan prior to the hearing on this matter.

A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

17. [13-25345](#)-E-13 JAMES/ANA SPEARS MOTION TO DISMISS CASE
TSB-2 Candace Brooks 8-7-13 [[28](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

18. [12-20846](#)-E-13 SALVADOR/AUDRA ACOSTA MOTION TO DISMISS CASE
TSB-1 Guillermo Geisse 8-7-13 [[37](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without

prejudice pursuant to Federal Rule of Civil Procedure 41(a) (2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

19. [11-36147](#)-E-13 **KIMBERLY STIENER-MURPHY** **MOTION TO DISMISS CASE**
NLE-4 **C. Anthony Hughes** **7-1-13 [[101](#)]**

Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 1, 2013. By the court's calculation, 65 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$21,630.28 delinquent in plan payments, which represents multiple months of the \$5,407.57 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c) (1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel,

and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

20. [10-32148](#)-E-13 **SUSAN DAVIS-CARR**
DPC-6 **Stephen Koonce**

MOTION TO DISMISS CASE
7-30-13 [[47](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 30, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,040.00 delinquent in plan payments, which represents multiple months of the \$760.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

21. [11-49750](#)-E-13 JUDITH ROTH
TSB-1 Michael O'Hays

CONTINUED MOTION TO DISMISS
CASE
6-28-13 [[23](#)]

CONT. FROM 7-31-13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 28, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's tentative decision is to continue the hearing on the Motion to Dismiss to 10:00 a.m. on November 13, 2013. No appearance at the September 4, 2013 hearing is required.

PRIOR HEARING

The Chapter 13 Trustee argues that the Debtor's proposed plan will complete in 74 months as opposed to the 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The Trustee argues that the debtor is in material default of the terms of the plan.

Debtor responds, arguing that Debtor did not include student loan debt that she co-signed for her niece because she considered the obligation to be her nieces's obligation and only the obligation of her niece if she defaulted. However, Wells Fargo filed a claim for \$22,424.90 for this obligation, which has resulted in this motion to dismiss.

Debtor asserts they will be objecting to the Wells Fargo claim and asking for a determination that they will not be paid a dividend from her monthly payment, calendared for August 20, 2013. Debtor states if the determination is made that Wells Fargo has to be provided for in Debtor's plan, she will file a modified plan in two weeks.

A review of the docket shows that Debtor filed an Objection to Claim of Wells Fargo Bank, N.A. on July 23, 2013, set for hearing on August 20, 2013.

CONTINUANCE

The Objection to Claim of Wells Fargo Bank, N.A. was heard on August 20, 2013 at 3:00 and further continued to October 8, 2013 at 3:00. Dckt. 40.

The court continues the hearing on the Motion to Dismiss to 10:00 a.m. on November 13, 2013, to be heard after the Objection to Claim filed by Debtor.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on November 13, 2013.

22. [09-48453](#)-E-13 STEVEN/DONNA MENSER
DPC-6 Julian Roberts

MOTION TO DISMISS CASE
7-30-13 [[222](#)]

Appearance of Julian Roberts, Counsel for the Debtors is Required for the September 4, 2013 Hearing Telephonic Appearance Permitted

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on July 30, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to continue the hearing on the Motion to Dismiss to 10:00 a.m. on -----, 2013. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,294.98 delinquent in plan payments, which represents multiple months of the \$691.40 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor responds, stating that Debtors completed their confirmed plan on January 23, 2013, and are entitled to a discharge. Debtor contends that the Trustee made an error in calculation and that according to the confirmed plan, Debtors were to pay \$1,214.00 per month for 36 months for a total of \$43,704.00. The Trustee states \$44,946.77 and Debtor states they have overpaid \$1,242.77 and are not in default.

TRUSTEE'S RESPONSE

The Trustee states there has been some confusion in this case. Trustee asserts the confusion began with debtor's Fourth Amended Chapter 13 plan, where they moved the mortgage creditor (BAC Home Loan) from Class 1 to Class 4 as a result of successfully modifying their loan. Up to the point of the Debtors filing the Fourth Amended Plan, Trustee was paying BAC Home Loan as Class 1 with ongoing payments in the amount of \$3,002.91 per month for a total of \$18,017.46 (6 months).

The Fourth Amended Plan lowered the plan payment from \$4,826.30 to \$1,214.00, but Debtors made the new plan payment effective back to the beginning of the case and failed to account for the \$18,017.46 that was paid to BAC Home Loan by the Trustee.

The Trustee states the confusion began when the Trustee filed an objection to the Fourth Amended Plan correctly pointing out that \$18,017.46 has been paid to BAC Home Loan but the objection incorrectly gave the impression that Debtors had overpaid the Trustee by \$10,627.35. Debtors apparently had paid into the plan what they needed to, but because the payment terms of the Fourth Amended Plan failed to account for the past payments made by the Debtors, it gave the appearance of overpayments, rather than an actual overpayment.

Trustee states the word "overpaid" confused debtors' counsel who in turn filed a Fifth Amended Plan wherein Debtors correctly acknowledged the past payments into the plan, but then reduced the remaining plan payment down to \$691.40 per month. In response to the reduction in payments, Trustee objected to the plan and was left "scratching its head" over the Debtors explanation of spreading the overpayment over the remaining 18 months of the plan.

The Trustee states that the Fifth Amended Plan should have never been confirmed since it did not propose a payment stream sufficient to pay the claims it proposed to pay, but due to the confusion in this case, somehow it got confirmed. The Trustee states that he should have filed a motion to reconsider, but Lawrence Loheit was retiring and the current Trustee was stepping in.

The Trustee argues that while the debtors have paid all payments called for under the erroneously confirmed chapter 13 plan (Fifth Amended Plan),

debtors have not finished payment the claims intended to be paid by their plan. Therefore, debtors have not completed their plan. The Trustee states that a priority claim of the Internal Revenue Service remains to be paid. Trustee argues that the plan is not complete and it is still possible for the debtor to modify the plan.

DISCUSSION

Cutting through the "confusion" of prior amended plans, the terms of the current confirmed plan, and the alleged errors in calculation, the pertinent question is whether the confirmed plan sufficiently provides for the payment of the claims. The confirmed Fifth Amended Plan provides for two Class 2 claims in the amounts of \$114.73 and \$495.23, \$4,000.00 in attorneys fees, two Class 5 claims of \$11,796.00 and \$6,216.00, and for Trustee Fees. The Trustee also made payments to BAC Home Loans prior to confirmation of the amended plan and the loan modification in the amount of \$18,017.46. Based on the foregoing, the court determines that the total of \$76,627.14 need to be paid under the plan (estimating the Trustee fees at 8%). The Trustee states \$44,946.77 has been paid into the plan as of the date of the Motion to Dismiss. Therefore, the Debtor needs to pay in approximately \$31,680.37 over the remaining 16 months of the plan. The court estimates the monthly payment to be approximately \$1,980.02 per month.

The following charts summarize the court's analysis:

Plan Payments to Trustee by Debtors Under Plan

Payments Made Prior to Fifth Amended Plan	\$31,265.35
Payments Made Under Fifth Amended Plan as of Motion to Dismiss	\$13,681.42
Total Plan Payments as of Motion to Dismiss	\$44,946.77

Plan Payments to Creditors and Expenses

Class 2 Pmt for 60 Months	114.73	60	\$6,883.80
Class 2 Pmt for 60 Months	495.23	60	\$29,713.80
Attorneys Fees Paid Through Plan			\$4,000.00
Trustee Fees Paid Through Plan (assume 8%)		0.08	\$0.08
Home Loan Payments Made by Trustee Prior to Fifth Amended Plan			\$18,017.46
Class 5 Tax Claim Paid Through Plan			\$11,796.00

Class 5 Tax Claim Paid Through Plan		\$6,216.00
Total Monies to be Disbursed Under Plan		\$76,627.14
Payments into Plan as of Filing of Motion to Dismiss		(\$44,946.77)
Projected Additional Payments Required Under Plan		\$31,680.37
Months Remaining Under Plan	16	
Projected Monthly Payment Amount For Remainder of Plan		\$1,980.02

As the current plan provides for \$691.40 per month, the plan payment is not sufficient to provide for the payment of the claims in the confirmed plan. Therefore, grounds exist to dismiss the case. However, the court grants a continuance in order for the Debtor to determine a course of action.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on -----, 2013.

23. [13-28454](#)-E-13 TERESA BURNS
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-29-13 [[22](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on July 24, 2013). The court docket reflects that on July 31, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Office of the United States Trustee on August 7, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on June 18, 2013. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Moreover, Trustee states that the federal income tax return for the four years preceding the filing of the petition. Trustee also argues that Franchise Tax Board filed a claim on April 3, 2013 indicating that California State tax returns have not been filed for 2000, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011 and 2012. Filing of the return is required. 11 U.S.C. § 1308. Debtor's failure to file the return is grounds to dismiss the case. 11 U.S.C. § 1307(e).

Lastly, the Trustee argues that Debtors do not disclose prior cases. The Trustee states a search of PACER shows case NO. 11-25844 which was filed March 9, 2013 as a Chapter 13 case and converted to Chapter 7 and discharged on September 2, 2011.

DEBTOR'S RESPONSE

Debtor responds, stating he has filed an amended plan, and a motion to confirm is forthcoming as soon as Debtor can figure out his schedule. Debtor states the new plan payments will start with a September payment.

Debtor also argues he has filed all required tax returns for both federal and state income taxes and that the Franchise Tax Board's proof of claim provides false information. Debtor states that he has the tax returns and will supply them to the Trustee but will not file them into the court record for privacy concerns. Debtor states he will bring them to the hearing.

Debtor also states that he has amended the petition to reflect the prior bankruptcy case.

DISCUSSION

A review of the docket reveals that Debtor did file an Amended Plan on August 20, 2013, which is similar to the prior plan filed February 5, 2013. However, Debtor has failed to file a Motion to Confirm the amended plan or any evidence in support of the plan.

The Debtor's Plan provides in Class 2 for a \$60,000.00 secured claim, which he wants to pay over the life of the plan. The \$60,000.00 is to be paid over 5 years with 3% interest, with monthly payments of \$253.00. Putting aside the issue of whether 3% is reasonable and proper, a monthly payment of \$253.00 will not fund the payment of this claim. Even at 3% interest, to pay the \$60,000.00 over the 60 months of the Plan. Using the Excel loan calculator program, the court computes that the monthly payment would need to be \$1,078.12. A monthly payment of \$253.00 would amortize the payment of \$60,000.00 with 3% interest over a period of 360 months (30 years).

Simple Loan Calculator

	Enter values
Loan amount	\$ 60,000.00
Annual interest rate	3.000%
Loan period in years	30
Start date of loan	9/1/13
Monthly payment	\$ 252.96
Number of payments	360
Total interest	\$ 31,066.47
Total cost of loan	\$ 91,066.47

No other claims are to be paid through or outside of the Chapter 13 Plan. Dckt. 66. The Additional Provisions to the proposed plan discuss a dispute over this claim and the Debtor's belief that \$60,000.00 would be a "fair settlement." Such indicates that he seeks to modify this claim - a unilateral "settlement." These provisions recount the disputes that the Debtor has with the creditor. Rather than a Chapter 13 Plan, this document reads more like a complaint and "judgment" determining the rights of the parties.

Therefore, cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the

Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

25. [13-27956](#)-E-13 PATRICIA HEUSTESS
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-16-13 [[51](#)]**

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on August 12, 2013). The court docket reflects that on August 22, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

26. [11-49265](#)-E-13 CHARLES/SANDRA INDARA
DPC-2 John Tosney

MOTION TO DISMISS CASE
7-30-13 [[29](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on July 30, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$8,860.00 delinquent in plan payments, which represents multiple months of the \$2,215.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

27. [12-21171](#)-E-13 JIMMY GARCIA
TSB-1 Scott Sagaria

MOTION TO DISMISS CASE
8-7-13 [[28](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

28. [13-24776-E-13](#) DARLA HILL
TSB-2 Mary Ellen Terranella

MOTION TO DISMISS CASE
8-7-13 [[23](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 7, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

The Trustee argues that the Debtor did not commence making plan payments and is \$372.00 delinquent in plan payments, which represents multiple months of the \$124.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's sustaining the Trustee's Objection to Confirmation on June 18, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

29. [13-23180](#)-E-13 TONG/ARLENE BE
HB-2 Eric Schwab

MOTION TO COMPEL ABANDONMENT OF
PERSONAL PROPERTY
8-21-13 [[84](#)]

**Appearance of Counsel for the Debtors is Required
for September 4, 2013 Hearing**

**The Court Permits Telephonic Appearance for
Debtors' Counsel, Leaving it to Such Counsel's
Discretion in Light of the Court's Concerns
as to the Debtors Fulfilling Their
Fiduciary Obligations to the Estate**

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 21, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Abandon Personal Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny without prejudice the Motion to Abandon Personal Property. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential

value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

Creditor FW CA-Auburn Billage, LLC seeks an order compelling Debtors Tong Leang Be and Arlene Ayhwa Le to surrender any right, claim or possession to the "equipment and personal property" that Debtors abandoned at their commercial premises at Auburn Village shopping center. Creditor states it has a first contractual lien and security interest on the personal property pursuant to the lease. Creditor states that Debtors have confirmed on numerous occasions their abandonment of any rights, title and interest in the personal property, including a signed stipulation, but have failed to file a Motion to Confirm Abandonment. Creditor states the Debtors' estate continues to accrue liability to it for daily storage fees as an administrative claim, thus creating a burden on Debtors' estate without benefit.

However, the Creditor fails to state what items of "equipment and personal property" from the Debtors' prior business they wish to abandon. The court will not issue a vague order for the Trustee to abandon "equipment and personal property." Movant relies upon 11 U.S.C. § 554(b) as the legal basis for the court ordering the "abandonment" to Movant. No cases or other legal authority is provided for the proposition that an abandonment ordered by the court can transfer title to the personal property to Movant.

Abandonment of property pursuant to 11 U.S.C. § 554(a) and (b) is addressed in Collier on Bankruptcy, 5-554 Collier on Bankruptcy ¶ 554.02, which states,

[3] Effect of Abandonment

Upon abandonment under section 554, the trustee is divested of control of the property because it is no longer part of the estate. Thus, abandonment constitutes a divestiture of all of the estate's interests in the property. Property abandoned under section 554 reverts to the debtor, and the debtor's rights to the property are treated as if no bankruptcy petition was filed. 22 Although section 554 does not specify to whom property is abandoned, property may be abandoned by the trustee to any party with a possessory interest in it. 23 Normally, the debtor is the party with a possessory interest. However, in some cases, it may be some other party, such as a secured creditor who has possession of the property when the trustee abandons the estate's interest. In any event, property abandoned under subsection (c) (scheduled but not administered property) is deemed abandoned to the debtor.

Abandonment should not be considered a judicial sale of the property. Therefore, when property is subject to a security interest, abandonment does not take the place of a proper foreclosure sale. Even if the secured party is given possession, it will still have to comply with any nonbankruptcy law requirements for sale. 24 Abandonment also should not be considered to divest the court of jurisdiction to enforce the rights of a debtor to claim an exemption under section 522. 25

More significantly, the "abandonment" of property from the bankruptcy estate is to a person who has an interest in the property. An abandonment is not a substitute for a bill of sale.

In its Motion, Movant asserts,

- A. Debtors vacated commercial premises on April 30, 2013, owned by Movant.
- B. The court ordered the rejection of the lease of the commercial premises.
- C. The Debtors left unidentified personal property at the commercial premises.
- D. On a number of occasions the Debtors have "confirmed" that they intend to "abandon" the personal property left on the commercial premises.
- E. The Debtors have failed to file a motion to "confirm abandonment."
- F. Therefore, the Movant files this Motion.
- G. Once abandoned, the Movant can then dispose of the personal property pursuant to unidentified California statutes.

Motion, Dckt. 84.

Counsel for Movant provides his declaration attesting to counsel for the Debtors confirming on multiple occasions that the Debtors intend to "abandon" any interest in the personal property to Movant. Declaration, Dckt. 85. He also testifies that the parties executed a stipulation for which they sought (without filing a motion to seek relief) an order from the court. Further, that the Debtors intended to just confirm a Plan and then have the assets be abandoned to Movant post-confirmation. The Debtors' proposed Chapter 13 Plan (for which confirmation was recently denied) provided for Movant's claim in Class 3 and the surrender of any collateral. The surrender of collateral is different from abandonment, and merely provides that the automatic stay is terminated and the creditor may exercise its rights in and to the collateral.

The Motion does not identify what assets of the estate Movant seeks to have "abandoned." Rather, it requests the court to issue an order which effectively states, "the order signs this order to transfer title of personal property, whatever may exist, as claimed by Movant to exist, to Movant. The court has no knowledge of, nor care to know, the personal property for which it is executing this order in lieu of a bill of sale." This court does not issue such orders, even if an "abandonment" was proper.

The conduct of the Debtors raises significant concerns for the court. As Chapter 13 Debtors, they are fiduciaries to the estate and responsible for assets of the estate. This includes property of the estate which they have left on the commercial property. It appears that the Debtor have little

concern for such "mere" fiduciary duties, as it does not serve their purpose or scheme in this case. It appears that the Chapter 13 Debtors are affirmatively instructing their attorney not to prepare and prosecute such motions as are appropriate for addressing this property of the estate.

When Chapter 13 debtors and debtors in possession are not up to the task of fulfilling their fiduciary duties, the court often converts the case to one under Chapter 7 trustee or appoints a Chapter 11 trustee. This insures that a fiduciary who will fulfill his or her duties is responsible for the estate, and the debtors are "relieved" of such burdens which they are incapable of handling.

The Motion to Compel Abandonment is denied without prejudice to Movant filing a motion seeking proper relief for the subject matter of this motion.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Abandon Personal Property filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is denied without prejudice to Movant filing a motion seeking proper relief for the subject matter of this motion.

30. [13-23180](#)-E-13 TONG/ARLENE BE
NLE-1 Eric Schwab

MOTION TO DISMISS CASE
8-20-13 [[79](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on August 20, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on August 6, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and

the case is dismissed.

31. [13-27381](#)-E-13 ROBERT PLOUGHE
TSB-1 Pro Se

MOTION TO DISMISS CASE
8-6-13 [[45](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Office of the United States Trustee on August 6, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

The Trustee argues that the Debtor did not commence making plan payments and is \$740.78 delinquent in plan payments, which represents multiple months of the \$370.39 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

The Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the Debtor must file a motion to confirm the Plan. See Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11

U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

32. 12-24882-E-13 JOSE AVALOS
TSB-1 Timothy Walsh

MOTION TO DISMISS CASE
8-7-13 [23]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 7, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

The Chapter 13 Trustee argues that the Debtor is in material default, as Debtor failed to provide for the Priority claim of the Franchise Tax Board in the amount of \$1,311.02. Trustee states that Debtor was provided with a Notice of Filed Claim on October 4, 2012, which indicated that a motion to modify was required.

A review of the docket shows that Debtor has not filed a Motion to Modify to date. Debtor did not file a response to this Motion to Dismiss, which was set on notice provided by Local Bankruptcy Rule 9014-1(f)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

33. 11-20386-E-13 JOSEPHINE CHIECHI
DPC-3 Stephen Koonce

MOTION TO DISMISS CASE
7-30-13 [[71](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 30, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$200.00 delinquent in plan payments, which represents multiple months of the \$100.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 21, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$330.75 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee also states that the Debtor is not in compliance with Rule 25(a) of the Federal Rule of Civil Procedure and Federal Rule of Bankruptcy Procedure 7025, because a suggestion of death has not been filed and served. Further, a motion for substitution of deceased party has not been made. The Trustee states that he has received information that tends to show the Debtor may be deceased. This issue has not been addressed by the Debtor's attorney.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and

upon review of the pleadings, evidence, arguments of counsel,
and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and
the case is dismissed.

35. [13-24587](#)-E-13 **MOHAMMED KHAN**
TSB-3 **David Ndudim**

MOTION TO DISMISS CASE
8-20-13 [64]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 20, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion and dismiss the Chapter 13 case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 16, 2013.

A review of the docket shows that Debtor has filed a new plan and a motion to confirm a plan set for hearing October 29, 2013. However, upon reviewing the Motion and supporting evidence, it appears that the Debtor has failed to provide the court with competent evidence from which the court can make the necessary findings of fact and conclusions of law. Rather, the Debtor provides the court with his personal findings of fact and conclusions of law, requesting that the court merely parrot what is stated by the Debtor. Declaration, Dckt. 76. These personal findings of fact and conclusions of law include:

Debtor's Personal Findings of Fact and Conclusions of Law

The Debtor has proposed the Plan in good faith and not by any means forbidden by law.

No objections have been filed to the Second Amended Plan.

The Chapter 13 Plan represents the Debtor's "best efforts."

The Debtor concludes that the property distributed under the Plan is not less than what would be distributed creditors through a Chapter 7 liquidation.

Court's Consideration of Findings and Conclusions Made by Debtor.

No evidence provided to court why bankruptcy case was filed, what Debtor is accomplishing in Plan, or facts from which the court can determine if the plan has been proposed in good faith.

No explanation is provided as to how the Debtor can testify under penalty of perjury as to future events. The Declaration is dated August 27, 2013, and objections to the proposed Second Amended Plan and motion to confirm are not due until October 8, 2013. The Debtor signing a declaration with this future events statement indicates to the court that the Debtor has not read the declaration and signs whatever is placed in front of him "if it lets him win."

The Debtor provides no economic calculation or evidence of his finances for the court to make such determination.

The Debtor provides no economic calculation of the Chapter 7 liquidation and the distributions under the plan from which the court can make the necessary findings of fact and conclusions of law. Possibly, the information can be ferreted out from Schedules and other pleadings in this case. To do so, the Debtor and counsel would be drafting the court to become the Debtor's advocate and take over those responsibilities.

The Debtor will be able to make the payments required under the Plan

The Debtor provides no economic calculations as to why or how he can afford to make the Plan payments. Again, if the court were inclined to become an advocate and witness for the Debtor, it may be able to construct a calculation based on the Schedules and other pleadings in this case. The court is not so inclined to be made a member of Debtor's counsel's law firm and provide such associate and paralegal services.

The inability of the Debtor to provide the court with evidence to support a plan is cause for dismissing this case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

36. [09-24599](#)-E-13 PAUL/LORI ANDERSON
DPC-2 Peter Macaluso

MOTION TO DISMISS CASE
7-30-13 [[139](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a) (2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

37. [13-28099](#)-E-13 **MICHIE SCHMITZ** **MOTION TO DISMISS CASE**
TSB-2 **Geoffrey Sutliff** 8-20-13 [[25](#)]

Local Rule 9014-1(f) (2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 20, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

the Trustee alleges that the Debtor's Attorney did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c) (1).

Moreover, Trustee argues that the Debtor has failed to provide business documents including: questionnaire, tax returns, profit and loss statements, bank account statements, proof of license and insurance or written statement that no such documentation exists. This documentation is required seven (7)

days before the first meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (i) .

Debtor responds, stating that counsel for Debtor will provide all the documents prior to the scheduled meeting of creditors and will promptly comply with any reasonable request from the Trustee. Counsel states that he and the Debtor will appear at the continued meeting of creditors.

Debtors have not provided admissible evidence showing that the required documents have been produced or either counsel or debtor appeared at the continued meeting of creditors.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.